IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 15904 of 2004

Between:

Kanduluri Venkateswarlu, S/o. K. Veeraswamy,
R/o. Guthikonda, Piduguralla Mandal, Guntur District.

..... PETITIONER

AND

1 State of Andhra Pradesh, Rep. by its Secretary,
Home Department, Secretariat Buildings, Hyderabad.
2 Collector and District Magistrate, Guntur.
3 Superintendent of Central Prison, Rajahmundry.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus or any other appropriate Writ or Order or direction directing the respondents to produce Kandurluri Hanumantha Rao alias Pandu, resident of D.No. 10-232-A, Guthikonda Village of Piduguralla Mandal, Guntur District, presently detained in the Central Prison, Rajahmundry and release him forthwith by declaring the order of detention passed by the second Respondent as illegal and unconstitutional.

Counsel for the Petitioner:MR.K.SURESHREDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court Made the Following :

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ORDER: (per GB,J)

This Writ Petition is filed challenging the order of detention passed by the second respondent- Collector and District Magistrate, Guntur in Proceedings SR.No. 01/2004/B2 dated 24.8.2004 under Section 2 (b) of A.P. Prevention of Dangerous Activities of Boot-leggers, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986).

The petitioner was detained under the impugned detention order on the ground that he was a boot-legger as defined under Section 2(b) of the Act. It was also observed that the recourse to normal legal procedure would involve more time and would not be an effective deterrent to prevent from indulging in further prejudicial activities. In support of the order of detention, the following grounds of detention were supplied to the detenu:

> "1. On 1.7.2004 about 2.45 P.M., an anonymous phone call was received by the in-charge Station House Officer, Prohibition & Excise Station, Piduguralla about your activities of abusing women with filthy language and engaging in manufacture and sale of illicit distilled liquor and same phone call was entered in the General Diary of the Station. A raid was organized on the same day at Guthikonda Village of Piduguralla Mandal and you are found escaping. The said fact was also recorded in the General Diary of the same day.

2. On 4.7.2004 at 6.00 PM the Prohibition and Excise authorities searched your house bearing D.No. 10-232-A of Guthikonda village in the presence of mediators duly recording the grounds of search under 165 Cr.P.C and the same was affixed to the door. During the course of search of the house 6(six) plastic cans with about 20 (Twenty) liters of 8illicit distilled liquor in each can, total (120) lts were recovered from the house. '6' samples of 180 ml. Each from each can containing illicit distilled liquor were drawn for the purpose of chemical analysis. The (6) cans with illicit distilled liquor and the above samples were seized under the cover of mediators report. On further search, voters list of 1995 and a telephone bill bearing receipt No. 0090148729, dated 4.11.2003 with telephone NO. GTK 275193 on your name were seized. On examination of the voters list it is found that you are enrolled at Sl.No. 846 as a voter at D.No. 10-232-A as Hanumantha Rao Kanduluri, S/o Nagaiah of 106, Gurazala Assembly constituency voters list of 1995 in poling booth No. 232. A case was registered against you in Pr.No. 127/04-05 of Proh. & Excise Station, Piduguralla of u/s 7 (A) R/W 8(e) of A.P. Prohibition Act. On further investigation made on 9.7.2004 at your house at Guthikonda youl have confessed that you used to manufacture illicit distilled liquor and further confessed that you used to manufacture illicit distilled liquor and further confessed that illicit distilled liquor seized by the officials on 4.7.2004 you're your house is of your own and that you have manufactured illicit distilled liquor and stored it in (6) nos. of 20 lts. Plastic cans and kept them in your house and on seeing officials during the raid you ran away from the house. You are arrested on 9.7.2004 and sent to judicial remand. You are enlarged on bail on 12.7.2004 by the Hon'ble 1st AMM Court, Gurazala on executing a bond for Rs. 5,000/- with two sureties for the like sum each. The samples in this case were sent for analysis through the Hon'ble 1st AMM, Court, Gurazala. The Govt. Chemical Examiner for Proh. & Excise, Regional Proh. Excise Laboratory, Guntur in respect R.C.No. 662, dated 20.8.2004 in Sl.No. 2019 to 2024 opined that 'the samples are illicit distilled liquor. They are unlawful product containing harmful impurities like acids, fusel oil and allied impurities which are injurious to health. Hence, they are not fit for human consumption". Charge sheet was filed against you on 21.8.2004 in the Hon'ble Court of the 1st Additional Munsif Magistrate Court, Gurazala for punishment under Section 7(a) r/w 8(e) of A.P. Prohibition Act of 1995.

3. On 17.7.2004 some women folk in Guthikonda Village complained that you are engaging in manufacture and sale of illicit distilled liquor and there by causing insult to them. The same was recorded in the General Diary on 17.7.2004 of Proh.& Excise Station, Piduguralla.

4. On 5.8.2004 at about 5.00 PM., a phone call was received by Station House Officer, Proh. & Excise Station, Piduguralla from an anonymous person that Kanduluri Hanumantha Rao being in a state of intoxication causing lot of trouble to the ladies besides selling illicit distilled liquor to the fellow consumers and therefore requested to control their illegal activities. Thereon a raid was conducted in Guthikona Village. On enquiry in the village the villagers confirmed the fact of creating trouble to ladies and selling illicit distilled liquor by you, but no body has come forward to give a written complaint against you out of fear of you. You are also found absconding at the time of raid. The abovefacts are entered in the General diary dated 5.8.2004 of pidugurall Proh. & Excise Station.

5. On 17.8.2004 on reliable and prior information, the Proh.& Excise Officials raided a place called Racheruvu at distance of about 3 KMs south to Guthikonda Vilalge, at about 3.30 P.M on seeing the Excise party you ran away fro bushes. Youl have been identified by the Excise Officials. The Excise Officials combed the are from wehre you ran away. Then they found 30 mud pots ech containing about 30 lts of Fermented Jaggery Wash (total 900 lts Fermented Jaggery Wash) cover by Old Gunny pieces. On physical examination, the Excise Officials found dangerous and unwanted ingredients like tree bark and battery powder etc, in the Fermented Jaggery Wash. The Excise Officials collected sample of Fermented Jaggery Wash in piecemeal from all the 30 mud pots into a 375 ml., bottle and destroyed the reaming Fermented Jaggery wash along with pots and seized the sample bottle under the cover of mediators report. A

case in Pr. NO. 169/2004-05 under Section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995 was registered against you in Proh & Excise Station, Piduguralla. The sample bottle was sent to the Chemical Examiner for purpose of analysis and after analysis the Chemical Examiner in report Rc. No. 665/2004, dated 20.8.2004 in Serial No. 2034 opined that the sample is fermented wash fit for distillation and the case is under investigation.

On Close examination of the above facts it is established that the illicit distilled liquor is brewed through crude methods. It is clear form the expert opinion of Regional Proh.& Excise Laboratory, Guntur that liquor distilled, manufactured, stored and sold by you contains acids, fusel oil and allied impurities which are injurious to health. It is a point of common knowledge that a specially designed equipment is required to rectify Fermented Jaggery Wash to eliminate poisonous and harmful chemicals like acid, fusel oils and allied impurities. These chemicals are unfit for human consumption. Further you are distilling/manufacturing illicit distilled liquor on crude methods by adding harmful substances like battery powder and certain tree bark.

It is established that you are involving in activities like abusing women folk in filthy language and engaging in manufacture and sale of illicit distilled liquor for consumption of general public. You are also engaged in storage of huge quantity of illicit distilled liquor. You are further engaged in activities like insulting the women folk at the time of selling illicit distilled liquor. You are causing lot of trouble to the women fold while in a stage of intoxication. The Guthikonda village and surrounding areas are mostly inhabited by agricultural labourers and artisans and they are all poor people. By way of your illegal activities they have been tempted under your influence. They are afraid of even giving a written complaint against you.

The illicit distilled Liquor manufactured, stored and sold by you is having multiple hazardous effects on human health. The illicit distilled liquor contains impurities like higher alchhol acids, aldehydes, furfural and other un-known impurities in sufficiently large quantities along with other alcohols. These higher alcohol are more concentrated than the normal potable alcohols. These higher alcohols will have a direct effect on the central nervous system of the human body resulting in speedy deterioration of human health which may finally leads to death. Consumption of illict distilled liquor causes alcoholic liver diseases cardiac problems, mental irritation renal failures, respiratory depression and metabolic disorders. The Govt. have under taken a large scale drive on the evil effects of consumption of illicit distilled liquor by way of posters and cinema slides.

For the above said facts and reasons it is established that you are engaging in boot-legging activities and you are a boot-legger. You are acting in a manner prejudicial to the maintenance of public order by crating disturbance to the general public. You are causing a feeling of insecurity among the general public and grave danger to life and public health.

All the preventive steps like booking of cases and arresting and imposing conditions of bail against you fails to stop your illegal activities. The existing normal laws are unable to restrain you from indulging in boot-legging activities. Therefore, more preventive action is considered and essential. The normal action of launching and conducting prosecution against you is a long drawn process and it will not have desired effect to prevent you from further acting in any manner, prejudicial to the maintenance of public order(public health)

Hence, I Sri K. Rama Krishna Rao, IAS, Collector and District Magistrate, Guntur having carefully gone through the material placed before me and satisfied myself that you are a boot legger in terms of A.P. Prevention of Dangerous Activities of Boot-leggers, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 and acting in a manner prejudicial to the maintenance of Public order and causing a grave danger to life and public health. Hence, you are a fit person to be detained under the provisions of the above said Act.

It is informed you that you have a right to represent against this order of detention to the Chief Secretary to the Govt. of Amdhra Pradesh, Hdyerabad and Advisory Board."

Assailing the said order of detention, the learned counsel for the petitioner makes various submissions viz., that he does not fall within the definition of Boot-legger and that his acts did not fall within the expression prejudicial to the public interest etc,. He also raised the ground that the detenu is required to be intimated about his right of representation to the detaining authority apart from making representation to the advisory board of the Government of Andhra Pradesh. Therefore, on the sole ground, the learned counsel would submit that the order is liable to be set aside.

On the other hand the learned Advocate General however, submits that the acts of the detenu are affecting the public health at large and that the normal law is not able to contend the activities of the detenu and therefore, invoking provisions of Act 1 of 1986 are quite proper and legal.

We have heard the learned counsel for the parties.

The Supreme Court in STATE OF MAHARASHTRA VS. SANTOSH SHANKER ACHARYA, HARISH PAHWA VS STATE OF U.P AND IN NUTAN J. PATEL VS. S.V. PRASAD held that non-communication to detenu that he has right to make representation to detaining authority amounts to infraction of his right under Article 22(5) of the Constitution of India and therefore, it vitiates the entire order and in fact, on the basis of this principle this court has allowed number of Writ Petitions without going into the merits of the case.

Under these circumstances, we have not inclined to go into other aspects of the contentions raised by the learned counsel on merits. Suffice it to say that inasmuch as the detenu has not been informed that his right of representation to the detaining authority, the entire order of detention gets vitiated following the judgments of the Supreme Court referred to above.

Accordingly, the order of detention is set aside. The detenu shall be set at liberty forthwith if he is not required in any other case.

12.10.2004.

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To

1 The Secretary,
Home Department, Secretariat Buildings, Hyderabad.
2 Collector and District Magistrate, Guntur.
3 Superintendent of Central Prison, Rajahmundry.

4. 2 CD Copies.

5. 2 CCs to the Advocate General, High Court Buildings, A.P. Hyderabad (out).